

Appl. No. 10/699,192
Amdt. Dated 01/05/05
Reply to Office Action of 10/05/04

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application. The examiner has rejected claims 1-7, 9-14 and 16 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,782,003 to Bozzo in view of U.S. Patent No. 3,897,637 to Genho. In order to establish a prima facie case of obviousness under 35 U.S.C. § 103 (a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

The examiner asserts Bozzo discloses a plurality of control dials operably connected to the plurality of angle adjusting members, as recited in applicant's independent claims 1, 9, and 16. Merriam-Webster defines "dial" as "a face upon which some measurement is registered usually by means of graduations and a pointer" (See attached). Applicant respectfully submits the control dials of Bozzo are adjusting screws that include no measurements or pointer for assisting a user in accurately adjusting the laser beam, as applicant's control dials (See applicant's FIGS. 1 and 4, item 16). Applicant submits the adjusting screws 28a and 28b are not "dials" as defined above and required by applicant's independent claims because they do not have measurements or a pointer (See Bozzo's FIGS. 3,5,6,9, 11 and 12 and col. 7, lines 28-35). Therefore, any hypothetical combination of Bozzo with the other prior art of record would not teach applicant's claimed invention.

The examiner further asserts Bozzo discloses one laser supply source emitting a laser beam exiting from one aperture and having a unidirectional path substantially parallel to a third path of remaining ones of the laser beams for providing a reference path (See Bozzo's FIG. 16), as recited by applicant's claims 5, 9, and 16. Applicant submits Bozzo's laser beam 74 must be considered as the reference beam because a reference beam must pass along a unidirectional path as required by applicant's claims

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5, 9 and 16. Therefore, the remaining laser beams are 71 -73, and 71-75. Such beams 71-73 and 71-75 only have two paths and therefore, a third path does not exist for the reference beam 74 to be parallel thereto. (See Bozzo's FIG. 16). Therefore, any hypothetical combination of Bozzo with the other prior art of record would not teach applicant's claimed invention.

The examiner further asserts Bozzo discloses a plurality of angle adjusting members each including a body and a rod disposed substantially medially therebeneath for allowing same to pivot thereabout (See Bozzo's FIG. 14, item 28a), as recited in applicant's claims 7, 14, and 16. Applicant respectfully submits Bozzo's item 28a is the adjusting screw cited in paragraph 2 of the Remarks/Arguments above, not a body and rod for allowing the angle adjusting members to pivot thereabout. Such adjusting screw 28a is used to calibrate the projection of the laser beam of Bozzo (See Bozzo's FIGS. 3,5,6,9, 11 and 12 and col. 7, lines 28-35), not for allowing the angle members to pivot thereabout, as recited in applicant's claims 7, 14, and 16. Therefore, any hypothetical combination of Bozzo with the other prior art of record would not teach applicant's claimed invention.

The examiner acknowledges Bozzo does not disclose a plurality of leveling devices attached to an exterior surface of a housing for assisting to maintain an apparatus at a substantially level position wherein the leveling devices comprise a plurality of spirit levels disposed substantially perpendicular to each other for determining the surface level of corresponding transverse planes. However, the examiner asserts it would have been obvious for one having ordinary skill in the art to modify the device of Bozzo so as to include the plurality of spirit levels taught by Genho to provide a means for increasing the levelness of the device during use, as recited in applicant's independent claims 1, 9, and 16. Applicant respectfully submits the device of Bozzo is a "truly self leveling device provided for operating by gravity and not requiring any pre-calibration, even on a slanted plane..." (See Bozzo's col. 2, lines 31-33). Bozzo further discloses "Inside the top portion 3 it is supported a self leveling movable equipment 8, which can swing, with respect to said top portion 3, about two horizontal axes 9 and 10, substantially mutually coplanar and perpendicular, and preferably

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crossing at the axis 5" (see Bozzo col. 4, lines 39-44 and FIGS. 5 and 6). Because the device of Bozzo is self leveling, it does not need a plurality of leveling devices attached to its exterior so a user can determine if it is level, as recited by applicant's independent claims 1, 9, and 16. As a result, there is no suggestion or motivation in Bozzo to include the plurality of spirit levels taught by Genho because Bozzo is self-leveling. That a prior art reference could be modified to form the claimed structure does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable with respect to the above arguments. Should the examiner consider necessary or desirable to make formal changes anywhere in the specification, claims and/or drawings, then it is respectfully asked that such changes be made by examiner's Amendment, if the examiner feels this would facilitate passage of the case to issuance. Alternatively, should the examiner feel that a personal discussion might be helpful in advancing this case to allowance, she is invited to telephone the undersigned attorney.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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